APPENDIX A

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 20,296

National Labor Relations Board, Petitioner, v. Mason and Hanger-Silas Mason Co., Inc., The Rust Engineering Co., a Joint Venture d/b/a Mason-Rust, Respondent.	On Application for Enforcement of an Order of the National Labor Relations Board.

[October 12, 1971.]

Before MEHAFFY and HEANEY, Circuit Judges, and MEREDITH, District Judge.

PER CURIAM.

The National Labor Relations Board petitions this Court for enforcement of its order against Mason-Rust. The Board's decision and order are reported at 179 N.L.R.B. No. 71, 72 LRRM 1372 (1969). We refuse to enforce.

Mason-Rust was engaged in the renovation of the "Gateway" ammunition plant in St. Louis, Missouri, for the United States Government. In early 1968, it employed about 700 employees, including 70 carpenters. With the

exception of 43 black laborers, four teamsters and two pipefitters, all of its employees were white.

On February 1, 1968, George Newsom and Doyal Criswell, both black members of the Carpenter's Union, discussed seeking employment with Mason-Rust.

The next day, Newsom telephoned Mason-Rust's personnel manager, Milton Hill, to inquire about going to work for Mason-Rust. He was referred to the carpenter foreman.

Thereafter, Newsom went to the job site and talked with Hill. Hill again told Newsom that the union was responsible for the hiring. Newsom then spoke to the president of the Carpenter's Union, who told him that the company did the hiring from a list maintained by union stewards.

On Friday, March 8, Newsom and Criswell went to Mason-Rust's personnel office and saw Hill. Newsom told Hill that the union officers had advised him that the union did not do the hiring. He demanded to be placed on the job as there were no other black carpenters on the job. He pounded the desk and shouted to emphasize his demand. Hill asked Newsom and Criswell if they were union members. Both men showed him their union cards. Hill then instructed the two men to see the carpenter foreman at the gate the next morning at 6:30.

The men did not report the next morning, a Saturday, but did report the following Monday. When they arrived at 7:00 A.M., however, the carpenter foreman had gone to work inside the gate. Criswell left for his job, but Newsom again went to see Hill. Hill refused to call the foreman saying it would be difficult to reach him. Newsom became upset and threatened to picket the plant. He stated he had picketed other places, some of them because of racial discrimination.

Hill denied that Mason-Rust practiced discrimination, and told Newsom to see the carpenter foreman the next day.

Newsom and Criswell were at the plant gate at 6:00 the following morning and met with the foreman. He told them there was a waiting list of 150 job applicants. Newsom replied that the job was a government one, and that no black carpenters had been hired. The foreman replied that the hiring was done at the office.

Newsom then went to see Hill and told him he was being given the runaround. Hill replied that he would have to keep going to the gate each morning to see the foreman. Newsom then stated that he was going to see the government. Newsom returned to see Hill a few days later. Hill said he was busy, and asked Newsom if he had seen the foreman. Newsom again stated he was going to take the matter up with the government.

Newsom then talked with someone in the Corps of Engineers' office at the project. He was given the name of the project manager, Joseph Higgins. Newsom called Higgins and told him his story. Higgins told Newsom that the union did the hiring. Newsom replied that he would have to pursue the matter with the government.

Newsom then called Mason-Rust's home office in Pittsburgh, and related his story. The official who answered told Newsom to contact Higgins again.

On April 2, Newsom met with Higgins and Hill. He told them that he was a charter Negro member of the Carpenters' Local, that he had been conducting an uphill fight to gain employment for blacks in the St. Louis area, and that he wanted to work at the project. Higgins told Newsom to fill out an application, but added that Mason-Rust had laid off 18 carpenters the day before. Newsom replied that Mason-Rust should lay off a white man to

make room for him. Newsom stated that he would picket, if necessary, to get the job.

Newsom returned to the plant several times, but never obtained a job. A number of carpenters had been hired between February 1 and April 2, 1968.

After the April 2 meeting, Higgins called the union and asked that some black carpenters be sent to the job. He told Hill to hire minority group personnel in every job classification if possible. He did not direct that Newsom be hired, however. He explained at the hearing that Newsom had acted in an abusive manner towards Hill, the Corps of Engineers and himself; and that, as a result, he had concluded that Newsom was emotionally unstable and would not make an ideal employee.

Two black carpenters were subsequently hired—the first, a member of the union, and the second, a nonmember recommended by the first.

Newsom filed an unfair labor practice charge with the National Labor Relations Board on May 2, 1968. The Regional Director subsequently issued a complaint against Mason-Rust. The complaint was amended on October 23, 1968, to charge that Mason-Rust had also discriminated against Criswell.

The Board found that Mason-Rust had violated §2(a)(1) of the National Labor Relations Act, 29 U.S.C. §§151 *et seq.*, in denying employment to Newsom and Criswell because of their engagement in protected concerted activities. It required Mason-Rust to grant relief and to post notices.

Mason-Rust contends on appeal that neither Newsom nor Criswell were employees within §2(3) of the Act, that the Board's finding that Criswell was discriminated against was based upon incidents occurring more than six months before the filing of an appropriate charge as required by

§10(b) of the Act, that neither Newsom nor Criswell was engaged in protected concerted activity within the meaning of the Act, and that the failure of Mason-Rust to employ Newsom or Criswell was unrelated to any concerted protected activity.

We find no merit in Mason-Rust's contention that neither Newsom nor Criswell were employees within the meaning of the Act. See, *Phelps Dodge Corp. v. N.L.R.B.*, 313 U.S. 177 (1941); *Reliance Insurance Companies v. N.L.R.B.*, 415 F.2d 1, 6 (8th Cir. 1969). Nor do we find merit in the contention that the charge, as it related to Criswell, was barred by the six-month statute of limitations. See, *N.L.R.B. v. Hotel Conquistador, Inc.*, 398 F.2d 430, 433 (9th Cir. 1968); *National Labor Relations Board v. Dinion Coil Co.*, 201 F.2d 484, 491 (2nd Cir. 1952).

We consider it unnecessary to decide whether Newsom and Criswell were engaged in concerted activities because we hold that, even if they were, the Board has failed to establish, by substantial evidence in the record as a whole, that Mason-Rust failed to hire them because of such activities.

An employer has a right to hire at will so long as such action is not based on opposition to legitimate union activity. *N.L.R.B. v. Century Broadcasting Corporation*, 419 F.2d 771, 778 (8th Cir. 1969). An inference that a failure to hire an employee was due to his union activity must be based upon evidence, direct or circumstantial, and not on mere suspicion. The burden of proving an improper motive for failure to hire is upon the Board. *Singer Company, Wood Products Division v. N.L.R.B.*, 371 F.2d 623, 624 (8th Cir. 1967). Mason-Rust witnesses testified that their reason for not hiring Newsom was that he missed appointments and used abusive language towards Mason-Rust supervisors on a number of occasions. This conduct led Mason-Rust officials to believe that Newsom

was emotionally unstable and less than a satisfactory employee.

In the face of this largely uncontradicted testimony, we do not believe that the Board was justified in finding that Newsom was denied employment because of his concerted activities.

We also find that there is no substantial evidence on the record as a whole to support the Board's finding that Mason-Rust failed to employ Criswell because of his activities. Little or no evidence was produced by the General Counsel inferring that Mason-Rust failed to hire Criswell because of the role he played in bringing the problem of employment of black carpenters to a head. Indeed, there is not even a showing that Criswell was available for work on the date of the alleged unfair labor practice. The Board acted at best on mere suspicions.

Enforcement will be denied.

HEANEY, Circuit Judge, dissenting.

I respectfully dissent.

Newsom and Criswell had the right, under §7 of the National Labor Relations Act, 29 U.S.C. §§151, *et seq.*, to engage in concerted activities for the purpose of inducing Mason-Rust to employ blacks as carpenters. *N.L.R.B. v. Tanner Motor Livery, Ltd.*, 349 F.2d 1 (9th Cir. 1965), *on second appeal*, 419 F.2d 216 (9th Cir. 1970); *United Packinghouse, Food & Allied Wkrs. Int. U. v. N.L.R.B.*, 416 F.2d 1126 (D.C. Cir.), *cert. denied*, 396 U.S. 903 (1969). This right, under the circumstances of this case, was not limited by §9 of the Act. There is no evidence that Mason-Rust and the union had any agreement permitting the union to take part in the hiring process. Absent such an agreement, Mason-Rust must be held to have had the final responsibility to hire. See, §8(f) of the Act.

There was substantial evidence to support the Board's finding that Newsom and Criswell were not hired because of their efforts to gain employment with Mason-Rust. Newsom, with some help from Criswell, vigorously pressed his demand that Mason-Rust employ black carpenters. Initially, they were given the "runaround" by Mason-Rust and the union, with each attempting to fix the responsibility for hiring on the other. They pressed their demands so vigorously, however, that Mason-Rust eventually decided to hire some black carpenters. Instead of hiring Newsom and Criswell, however, it hired two other blacks who had not participated in the effort to require Mason-Rust to employ black carpenters. On the basis of these facts, the Board was clearly correct in requiring Mason-Rust to justify its failure to hire Newsom and Criswell, and in finding that Mason-Rust had failed to sustain this burden. The inference drawn by the Board that Mason-Rust's failure to hire Newsom and Criswell was because of their concerted activities was appropriate. See, *Mead and Mount Construction Co. v. N.L.R.B.*, 411 F.2d 1154 (8th Cir. 1969). The record does indicate that Newsom was loud and perhaps even abusive on occasion; but this conduct occurred only after it was apparent that both Mason-Rust and the union were doing their best to avoid the employment of blacks as carpenters. Furthermore, the record shows that Criswell was a model of decorum, was qualified and was a member of the union, yet he too was not hired.

I would grant enforcement.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

APPENDIX B

United States Court of Appeals
For the Eighth Circuit

No. 20296 September Term, 1971

National Labor Relations Board, Petitioner, vs. Mason and Hanger-Silas Mason Company, Inc., The Rust Engineering Company, a Joint Venture d/b/a Mason-Rust, Respondent.	Application for Enforcement of Order of the National Labor Relations Board

This cause comes before the Court on consideration of a motion filed by George Newsom and Doyal Criswell, the charging parties, requesting leave of Court to intervene as petitioners for the purpose of filing petition for writ of certiorari in the Supreme Court of the United States. The Court has carefully considered the motion together with response thereto filed by counsel for respondent and, being fully advised in the premises, it is now here ordered that the motion for leave to intervene as petitioners for the purpose of filing petition for writ of certiorari in the Supreme Court of the United States be, and it is hereby, denied.

Judge Heaney would have granted the motion.

January 31, 1972

APPENDIX "C"

I

[¶ 21,323] MASON AND HANGER-SILAS MASON COMPANY, INC. et al. and GEORGE NEWSOM.

179 NLRB No. 71, Case No. 14-CA-4664, October 30, 1969, Herry R. Hinkes, Trial Examiner.

Before Fanning, Brown and Jenkins, Jr.

Thomas M. Hanna (McMahon & Berger) and J. Roy Weathersby, Birmingham, Ala., for Employer. George Newsom pro se. Theodore M. Chaskelson and John S. Stevens for NLRB.

Concerted or Protected Activity—Negroes Seeking Jobs—Refusal to Hire

An employer discriminatorily denied employment to two Negro carpenters because of their engagement in protected concerted activities as evidenced by the employer's knowledge that they were seeking employment not only for themselves but for other Negroes. The fact that the employer hired two Negro carpenters at a later date did not establish that the employer's earlier refusal to hire these employees was not due to racial discrimination. Accordingly, the Board did not adopt a Trial Examiner's factual conclusion that the failure to hire two Negroes was not motivated by racial discrimination. Section 8 (a)(1).—Back reference, ¶ 3830.58.

Trial Examiner's Findings and Conclusions

The employer was charged with violating Section 8 (a)(1) of the Act by refusing to hire two Negro employees because of their engagement in protected concerted activities.

Two union carpenters, Newsom and Criswell, both Negroes, went to the employer's construction site to seek employment. When they first spoke to the job foreman they were told that there were no colored employees on the premises. In a later meeting with the foreman they let it be known that they were seeking employment for themselves and for other Negroes because the employer did not have any on the job.

The two men then went to the Corps of Engineers' office to complain that the employer was not hiring Negro carpenters. From there they were sent to the office of the project manager. At this meeting they informed the project manager that they had been working in behalf of getting employment for Negro carpenters in the St. Louis area. The manager promised to look into the situation but told them that eighteen employees had been laid off just the day before.

Thereafter, the project manager instructed the foreman to hire minority group personnel in all craft classifications. Neither Newsom nor Criswell were hired by the employer. They were told that there were no present vacancies. Several weeks later the employer hired two Negro carpenters but not Newsom or Criswell.

It is concluded that Newsom and Criswell were discriminatorily denied employment because of their engagement in protected concerted activities. Both employees had met with the job foreman and consulted concerning the employer's hiring practices and their chances of getting employment as carpenters. They had met with the personnel manager and demanded that the employer hire Negro carpenters. The totality of the evidence showed that the two employees were working together. Moreover, as a result of the prodding by Newsom and Criswell, the employer began vigorous efforts to employ Negro carpenters. In fact, two were hired shortly thereafter.

The employer's contention that it did not know these employees were engaged in concerted activities was rejected. The personnel manager was advised by Newsom in the presence of Criswell that the company employed no Negro carpenters and it should have done so. Similar advice was given to the carpenter foreman. Finally, the project manager learned of the concerted activity when he met with the two employees and they informed him that they had been working for the employment of Negro carpenters in the area.

It was also concluded that inasmuch as two other Negroes were hired, the employer was not motivated by racial discrimination.

Board's Decision

The Board adopts the findings, conclusions and recommendations of the Trial Examiner as modified herein.

The Board does not adopt the Trial Examiner's subsidiary factual conclusion that the failure to hire two Negro carpenters was not motivated by racial discrimination. The mere fact that the employer hired two Negro carpenters at a later date did not necessarily establish that the employer's earlier refusal to hire Newsom and Criswell was not due to racial discrimination. This is especially true in view of the fact that the concerted activities engaged in by the two employees involved seeking a change in the employer's hiring practices in order to get employment for themselves and other Negro carpenters.

The Board concurs with the Trial Examiner's principal finding that the employer's refusal to hire Newsom and Criswell was because of their concerted protected activities.

II

RECOMMENDED ORDER

On the basis of the foregoing findings of fact and conclusions of law, I recommend that the Respondent, Mason and Hanger-Silas Mason Co., Inc. The Rust Engineering Company, a joint venture d/b/a Mason-Rust, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Refusing to employ applicants because they have engaged in concerted activities for their mutual aid or protection.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization to form labor organizations, to join or assist any labor organization and to engage in any other concerted activities for the purpose of collective bargaining or any other mutual aid or protection or to refrain from any and all such activities.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Offer George Newsom and Doyal Criswell, in that order, immediate employment as carpenters at its St. Louis project, if Respondent still needs carpenters on that project, without prejudice to such seniority or other rights and privileges as each would have enjoyed had he been hired on March 16, 1968, discharging, if necessary, any carpenter hired on that project on or after March 16, 1968 and make them whole for any loss each of them may have suffered by reason of the discrimination against each of them in the manner set forth in the section of the above Decision entitled "The Remedy."

(b) Upon request, make available to the Board or its agents for examination, a copy of all payroll records, social security payment records, timecards, personnel records and reports and all other records relevant and necessary to a determination of compliance with (a) above.

[21] (c) Post in conspicuous places, at its project in St. Louis, including all places where notices to employees are customarily posted, copies of the notice attached hereto and marked "Appendix."[6] Copies of said notice on forms provided by the Regional Director for Region 14, after being duly signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter. Steps shall be taken by Respondent to insure that said notices are not altered, defaced or covered by any other material.

(d) Notify the Regional Director for Region 14, in writing within 20 days from the date of this Recommended Order, what steps the Respondent has taken to comply herewith.[7]

Dated at Washington, D. C., April 17, 1969.

/s/ Harry R. Hinkes
Trial Examiner

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[6] If these Recommendations are adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER" in the notice. If the Board's Order is enforced by a decree of the United States Court of Appeals, the notice will be further amended by the substitution of the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" for the words "A DECISION AND ORDER."

[7] If these Recommendations are adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for the Fourteenth Region, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

III

[Caption Omitted in Printing]

179 NLRB No. 71 Case 14-CA-4664
D-3299
St. Louis, Mo.

DECISION AND ORDER

On April 17, 1969, Trial Examiner Harry R. Hinkes issued his Decision in the above-proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has considered the Trial Examiner's Decision, the exceptions and supporting brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner as modified herein.[1]

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[1] In finding that the Respondent had discriminatorily denied employment to two Negro carpenters, Newsom and Criswell, because of their engagement in protected concerted activities, the Trial Examiner also concluded that inasmuch as two other Negro carpenters were hired, the Respondent was not motivated by racial discrimination. However, the Trial Examiner had earlier found, and we agree, that the protected concerted activities engaged in by Newsom and Criswell involved seeking a change in Respondent's hiring practices in order to get employment for themselves and other Negro carpenters. Moreover, the mere fact that Respondent hired two Negro carpenters at a

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, and hereby orders that the Respondent, Mason and Hanger-Silas Mason Co., Inc., The Rust Engineering Company, a joint venture, d/b/a Mason-Rust, St. Louis, Missouri, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

Dated, Washington, D. C., October 30, 1969.

JOHN H. FANNING, Member
GERALD A. BROWN, Member
HOWARD JENKINS, JR., Member
NATIONAL LABOR
(Seal) RELATIONS BOARD

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later date does not necessarily establish that Respondent's earlier refusal to hire Newsom and Criswell was not due to racial discrimination. Accordingly, we do not adopt the Trial Examiners subsidiary factual conclusion that the failure to hire Newsom and Criswell was not motivated by racial discrimination. Our decision herein is grounded solely on the Trial Examiner's principal finding, in which we concur, that the Respondent's refusal to employ Newsom and Criswell was because of their concerted protected activities. See, **Tanner Motor Livery, Ltd.**, 148 NLRB 1402 at 1403-4.

APPENDIX "D"

I

Federal Rules of Appellate Procedure, Rule 15 (d), Title IV

TITLE IV. REVIEW AND ENFORCEMENT OF ORDERS OF ADMINISTRATIVE AGENCIES, BOARDS, COMMISSIONS AND OFFICERS

Rule 15. Review or Enforcement of Agency Orders—How Obtained; Intervention

(a) PETITION FOR REVIEW OF ORDER; JOINT PETITION. Review of an order of an administrative agency, board, commission or officer (hereinafter, the term "agency" shall include agency, board, commission or officer) shall be obtained by filing with the clerk of a court of appeals which is authorized to review such order, within the time prescribed by law, a petition to enjoin, set aside, suspend, modify or otherwise review, or a notice of appeal, whichever form is indicated by the applicable statute (hereinafter, the term "petition for review" shall include a petition to enjoin, set aside, suspend, modify or otherwise review, or a notice of appeal). The petition shall specify the parties seeking review and shall designate the respondent and the order or part thereof to be reviewed. Form 3 in the Appendix of Forms is a suggested form of a petition for review. In each case the agency shall be named respondent. The United States shall also be deemed a respondent if so required by statute, even though not so designated in the petition. If two or more persons are entitled to petition the same court for review of the same order and their interests are such as to make joinder practicable, they may file a joint petition for review and may thereafter proceed as a single petitioner.

(b) APPLICATION FOR ENFORCEMENT OF ORDER; ANSWER; DEFAULT; CROSS-APPLICATION FOR ENFORCEMENT. An application for enforcement of an order of an agency shall be filed with the clerk of a court of appeals which is authorized to enforce the order. The application shall contain a concise statement of the proceedings in which the order was entered, the facts upon which venue is based, and the relief prayed. Within 20 days after the application is filed, the respondent shall serve on the petitioner and file with the clerk an answer to the application. If the respondent fails to file an answer within such time, judgment will be awarded for the relief prayed. If a petition is filed for review of an order which the court has jurisdiction to enforce, the respondent may file a cross-application for enforcement.

(c) SERVICE OF PETITION OR APPLICATION. A copy of a petition for review or of an application or cross-application for enforcement of an order shall be served by the clerk of the court of appeals on each respondent in the manner prescribed by Rule 3(d), unless a different manner of service is prescribed by an applicable statute. At the time of filing, the petitioner shall furnish the clerk with a copy of the petition or application for each respondent. At or before the time of filing a petition for review, the petitioner shall serve a copy thereof on all parties who shall have been admitted to participate in the proceedings before the agency other than respondents to be served by the clerk, and shall file with the clerk a list of those so served.

(d) INTERVENTION. Unless an applicable statute provides a different method of intervention, a person who desires to intervene in a proceeding under this rule shall serve upon all parties to the proceeding and file with the clerk of the court of appeals a motion for leave to intervene. The motion shall contain a concise statement of the

interest of the moving party and the grounds upon which intervention is sought. A motion for leave to intervene or other notice of intervention authorized by an applicable statute shall be filed within 30 days of the date on which the petition for review is filed.

II.

Rule 23, Section 5, Rules of the Supreme Court of the United States

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5. Where several cases are sought to be reviewed on certiorari to the same court that involve identical or closely related questions, it shall suffice to file a single petition for writ of certiorari covering all the cases.

III

Subchapter II.—National Labor Relations

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 142, 1014 of this title; title 18 section 1951; title 39 section 1209.

§ 152. Definitions.

When used in this subchapter—

* * * * * * *

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or

any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

§ 157. Right of employees as to organization, collective bargaining, etc.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158 (a) (3) of this title. (July 5, 1935, ch. 372, § 7, 49 Stat. 452; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 140.)

AMENDMENTS

1947—Act June 23, 1947, restated rights of employees to bargain collectively and added provision that they have the right to refrain from joining in concerted activities with their fellow employees.

EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see note set out under section 151 of this title.

COMMUNIST ORGANIZATIONS, AND MEMBERS

Prohibitions placed on Communist organizations, and members thereof, with respect to labor, see chapter 23 of Title 50, War and National Defense, particularly sections 782 (4A), 784, 792a and 841 to 844 of that title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 158, 158a, 433 of this title; title 50 section 792a.

§ 158. Unfair labor practices.

(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

* * * * * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159 (a) of this title.

* * * * * * * *

§ 160. Prevention of unfair labor practices.

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(b) Complaint and notice of hearing; answer; court rules of evidence inapplicable.

Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: **Provided**, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is

made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to section 2072 of Title 28.

(e) Petition to court for enforcement of order; proceedings; review of judgment.

The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of Title 28. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdic-

tion of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of Title 28.

APPENDIX "E"

Excerpts From St. Louis Post-Dispatch of Wednesday, December 1, 1971, Final * * * Stock Market Up, Closing Prices Pages 5E and 6E

BLACK HIRING ACCORD

Plumbers Union Local 35 and Cement Masons Local 527 agreed today to hire sufficient blacks over the next three years to achieve a 17 per cent integration rate.

In a consent decree signed by United States District Judge John K. Regan, the plumbing union agreed to hire 128 black workers and the stone masons agreed to hire 85 into the trade over the period. The Plumbers Joint Apprenticeship Committee also has agreed to the order.

The decree grew out of a suit filed in September against six unions and eight contractor groups in the construction industry, alleging that the unions and contractors "had pursued a policy of discriminating against black workers because of their race. This has applied both to union membership and employment opportunities in the prospective trades," the Government's petition said.

The suit asked that the court order the unions to stop failing or refusing to admit blacks to membership on the same basis as whites. It asked also that the unions be ordered to stop discriminating against blacks in the matter of referral to jobs, of providing equal work opportunities and in admission to training programs.

Both unions are to establish minority training programs for persons over the age of 26. Local 35 is to admit 40 trainees in the next six months and a total of 120 over the next two and one half years. Local 527 agreed to admit 20 trainees initially and a total of 60 over the same period.

The unions were authorized to drop the training program when the 17 per cent integration figure was reached.

The Plumbers Joint Apprenticeship Committee was ordered to maintain separate lists of qualified black and qualified white applicants for training. Until the three-year decree terminates or until the 17 per cent figure is achieved, the committee is to choose apprentices from the lists at the ratio of two blacks for every three whites chosen.

Detailed records of the hiring program, referrals, hours worked by members of both races and information on those reaching journeyman status are to be provided by the unions at six-month intervals. The decrees contain lists of organizations where trainees might be solicited and lists of names of prospective trainees who should be given first consideration in the program.

Andrew J. Ruzicho, attorney in charge of the local office of the Department of Justice, Civil Rights Division, said that one other union was negotiating toward settlement but three other unions named in the suit have not. By agreeing to the decree, the two unions avoided continuation of the suit charging discrimination in hiring.

The attorney said that the agreement would make it easier for contractors to comply with federal hiring policies because more qualified blacks would be available.

Raymond I. Harris, who represents the contractors named in the suit, said that the group submitted a motion about a month ago asking that the court dismiss them because no charges were made specifically against the contractors.

"The contractors are willing to co-operate in any way," Harris said. "But we're saying we're not parties to any consent decree. That's up to the unions. The decree obviously will help, because there will be more blacks for the contractors to hire."

Excerpts From St. Louis Post-Dispatch of Sunday, January 9, 1972

EAST SIDE CARPENTERS FACE ORDER ON BIAS

East Side carpenters will be confronted with a new demand from a federal court this week to refrain from discriminating against Negroes in hiring for federally supported construction work.

The United States Court of Appeals, sitting in Chicago, reversed a decision in which a United States district judge in East St. Louis, William G. Jurgens, ruled in favor of Locals 169 and 480 of the United Brotherhood of Carpenters and Joiners in a dispute over training and hiring.

The higher court suggested that Juergens might issue a permanent injunction prohibiting interference with the rights of black carpenters. The appellate judges noted that only 39 of the 550 members of Local 169 were black and that only one of 367 members of local 480 was black.

In a ruling last April 8, Juergens refused to issue an injunction sought by the Department of Justice to prevent carpenters from walking off the job when black trainees appeared for work.

The carpenters had walked off the job the previous Nov. 17 after the unions were ordered to put to work a Negro trained under the so-called Ogilvie Plan, named for Illinois Gov. Richard B. Ogilvie.

Juergens said the evidence presented by the Government fell short of establishing discrimination against blacks. The suit was prepared in Washington and its filing was announced by Attorney General John N. Mitchell.

The government case was presented by Andrew J. Ruzicheo, of the civil rights division of the Department of Justice. He said the court of appeals decision should provide equal employment opportunities for blacks in the East St. Louis area.